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No. 06-299

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

WILLIAM F. HEGGER,

Petitioner,

v.

VISTEON AUTOMOTIVE SYSTEMS, INC., and FORD MOTOR CO.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Sixth Circuit properly affirmed the district court's summary judgment in favor of the defendant employers in this employment discrimination action when: (1) the plaintiff failed to proffer any evidence of illegal discriminatory conduct by the employers; (2) the plaintiff failed to offer any arguments that would rebut the employers' legitimate nondiscriminatory reasons for any adverse employment action that they took against the plaintiff; and (3) most of the actions about which the plaintiff complained were time-barred in any event.

INTERESTED PARTIES AND CORPORATE DISCLOSURE STATEMENT

The caption sets forth all of the parties to this case, except that two other entities were defendants (along with the respondents) in the district court: United Auto Workers International and United Auto Workers Local 737. Those entities were not named as appellees when the petitioner appealed to the United States Court of Appeals for the Sixth Circuit.

The corporate respondents have no parent companies. Moreover, no publicly held company owns ten percent or more of either respondent's stock.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
INTERESTED PARTIES AND CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
JURISDICTION	1
STATEMENT OF THE CASE	2
A. Overview of Hegger's Claims Against the Respondents	2
B. Hegger's 2002 EEOC Charge of Discrimination	4
C. Hegger's Medical Leave and Termination	7
D. The Summary Judgment Entered by the District Court	8
E. The Decision of the Court of Appeals	8
ARGUMENTS FOR DENYING THE PETITION	12
A. THIS COURT SHOULD DENY HEGGER'S PETITION EVEN IF IT BELIEVES THAT THE COURT OF APPEALS ERRED IN AFFIRMING THE SUMMARY JUDGMENT AGAINST HIM	12
B. THE COURT OF APPEALS CORRECTLY AFFIRMED THE SUMMARY JUDGMENT AGAINST HEGGER AND APPLIED WELL-SETTLED PRINCIPLES OF LAW IN DOING SO	15
CONCLUSION	19

TABLE OF AUTHORITIES

Page

CASES

Anderson v. Liberty Lobby Inc., 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) 15

Ang v. Proctor & Gamble Co., 932 F.2d 540 (6th Cir. 1991) 16

Anthony v. BTR Auto. Sealing Sys., 339 F.3d 506 (6th Cir. 2003) 18

Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) 15

Ford v. General Motors Corp., 305 F.3d 545 (6th Cir. 2002) 17

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) 14, 15

The Monrosa v. Carbon Black, Inc., 359 U.S. 180, 79 S. Ct. 710, 3 L. Ed. 2d 723 (1959) 15

Raytheon Co. v. Hernandez, 540 U.S. 44, 124 S. Ct. 513, 157 L. Ed. 2d 357 (2003) 15

Rice-Lamar v. City of Ft. Lauderdale, 232 F.3d 836 (11th Cir. 2000), *cert. denied*, 534 U.S. 815, 122 S. Ct. 42, 151 L. Ed. 2d 14 (2001) 16

Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004) 16

Walker v. Thompson, 214 F.3d 615 (5th Cir. 2000) 17

STATUTES

28 U.S.C. § 1252 2

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1291 1

TABLE OF AUTHORITIES – Continued

Page

28 U.S.C. § 1331 1

29 U.S.C. § 621 1

29 U.S.C. § 623(d) 1

29 U.S.C. § 1985 1

42 U.S.C. § 2000e, *et seq.* 1

Pub. L. 100-352, § 1 2

RULES

S. Ct. R. 10 ..... 12, 13

S. Ct. R. 12.5 2

S. Ct. R. 13.1 1

S. Ct. R. 29.4(b) 2

S. Ct. R. 29.4(c) 2

Fed. R. App. P. 4 1

JURISDICTION

The district court had original jurisdiction over this case pursuant to 28 U.S.C. § 1331 because the petitioner, William F. Hegger ("Hegger"), asserted claims against the respondents, defendants in the trial court, pursuant to federal statutes. R:1; APX:8-29.[1] The federal statutes on which Hegger predicated his claims included: (1) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*; (2) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 and 623(d); and (3) Section 301 of the Labor Management Relations Act, 29 U.S.C. § 1985. R:1; APX:8-29; APP:11a.

The district court entered a final judgment against the petitioner and in favor of the respondents on January 3, 2005. R:52; APX:27-29; APP:11a-14a. Hegger filed no post-judgment motions. Instead, he filed a notice of appeal on January 26, 2005. R:53; APX:30. Hegger's notice of appeal was timely under rule 4 of the Federal Rules of Appellate Procedure, and the United States Court of Appeals for the Sixth Circuit had jurisdiction over the appeal pursuant to 28 U.S.C. § 1291.

The Sixth Circuit's decision affirming the district court was issued on June 2, 2006. *See* APP:1a-10a. Hegger filed no post-decision motions. He filed his petition for certiorari with this Court on August 28, 2006. The petition was timely under rule 13.1 of this Court's rules. Although

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[1] The record on appeal is cited both as "R:___," according to docket number, and as "APX:___," according to page number of the joint appendix that the parties filed with the Sixth Circuit. Hegger's petition is cited as "P:___," according to page number. The appendix to Hegger's petition, setting forth the decisions of the court of appeals and the district court, is cited as "APP:___," according to page number.

Hegger states that this Court's "jurisdiction over the instant controversy" arises under 28 U.S.C. § 1252 (P:1), he is mistaken. That statute was repealed in 1988. *See* Pub. L. 100-352, § 1. This Court's jurisdiction actually exists pursuant to 28 U.S.C. § 1254(1).

The respondents agree with Hegger that rule 12.5 of this Court's rules is not applicable to his petition. P:1. The reason for that rule's inapplicability, however, is not, as Hegger says, because his petition is allegedly "predicated on errors made by the United States Court of Appeals for the Sixth Circuit." P:1. Instead, the reason rule 12.5 does not apply to Hegger's petition is simply because he is not a cross-petitioning respondent.

Similarly, although the respondents concur with Hegger that neither rule 29.4(b) nor (c) applies here, the reason is not, as Hegger states, because "neither the United States nor any department thereof is a party to these proceeding." P:1. Rather, the reason that rule 29.4(b) or (c) is inapplicable here is because this case does not draw into question the constitutionality of any federal or state statute.

STATEMENT OF THE CASE

A. Overview of Hegger's Claims Against the Respondents

This case involves alleged employment discrimination. Hegger, the employee, sued the respondents, his employers, for alleged race and age discrimination and retaliation based on disparate discipline, failure to hire or promote, and constructive discharge. R:1; APX:8-29.

Hegger came to work for the Ford Motor Company in 1996 at its Glass Plant facility ("the plant") in Nashville, Tennessee.[2] R:1: APX:11. During the course of Hegger's employment, he filed two charges of discrimination with the Equal Employment Opportunity Commission ("EEOC") – one in 1998 and one in 2002. R:43; APX:124, 139. Hegger had previously filed charges or lawsuits (or both) against three prior employers. R:43; APX:122.

With respect to the charge of discrimination that Hegger filed in 1998, the EEOC issued Hegger a right to sue on March 18, 1998, but he did not bring suit within the designated statutory timeframe. R:43; APX:151; *see* APP:3a. Instead, he waited more than five years before he filed suit in 2003, yet his complaint in the lawsuit identified incidents that he had referenced in the 1998 charge. R:36; APX:414-15.

The 1998 charge detailed incidents occurring between August 26, 1996, and February 7, 1998, and Hegger checked the box on the form to indicate an alleged continuing violation. R:36; APX:414-15. The specified incidents included the application for Jesse Jackson's staff and the handwritten Ku Klux Klan card referenced in the certiorari petition that Hegger has filed with this Court. R:36; APX:414-15; *see* P:3. Neither those incidents nor any of the other incidents mentioned in the brief that Hegger filed with the Sixth Circuit as allegedly supporting a hostile work environment were identified in the charge of discrimination that Hegger filed with the EEOC in 2002,

[2] In 2000, respondent Visteon Automotive Systems, Inc. ("Visteon") became a wholly-owned subsidiary of Ford Motor Company. APP:2a n.1. Hegger and other hourly employees at the plant were loaned to Visteon. APP:2a n.1

which immediately preceded the commencement of this lawsuit. *See* R:36; APX:451. Hegger did not know who was responsible for any of the incidents referenced in his 1998 charge of discrimination, but it is undisputed that he was not subjected to any racial comments or remarks by any supervisor during his employment. R:43; APX:123, 150.

In neither the complaint that he filed following his 2002 charge of discrimination nor in his response to the respondents' motion for summary judgment did Hegger allege or argue that the events or incidents identified in his 1998 charge were part of a continuing violation related to events or incidents referenced in his 2002 charge. R:41; APX:114-16. In fact, in his response to the respondents' motion for summary judgment, Hegger conceded that events occurring before 1999 were time-barred. R:41; APX:115-16.

On appeal from the summary judgment against him, Hegger abandoned his claims regarding alleged age discrimination. *See* APP:5a n.4. Moreover, Hegger did not make any arguments (either in opposition to summary judgment in the district court or in the court of appeals) related to his discharge, medical leave, or the respondents' failure to promote him. *See* R:41; APX:114-16. The court of appeals therefore confined itself not only to the issues raised in Hegger's 2002 charge of discrimination but also to Hegger's arguments concerning the summary judgment against him on his Title VII claim (and the Tennessee state-law counterpart to that claim). *See* APP:5a-10a.

B. Hegger's 2002 EEOC Charge of Discrimination

In the charge of discrimination that Hegger filed with the EEOC in 2002, he checked boxes on the form for race

discrimination, age discrimination, and retaliation – covering the period from September 1, 2002, until October 20, 2002. R:36; APX:451. He did not check the box for an alleged continuing violation, and he did not allege the existence of a hostile work environment. R:36; APX:451. The full text of the substantive portion of Hegger's charge read as follows:

> I have been unfairly disciplined, because of my race Black. I am the only Black employee within my job classification on my crew, and, the most senior in age. I am repeatedly disciplined for alleged infractions that White employees also commit but are not disciplined. I have been treated significantly differently by my employer in the area of attendance and wages based on my race. I have been retaliated against for filing prior charges, making complaints about my unfair treatment, and filing grievances regarding on-the-job harassment. Employees not of my race have been treated more favorably regarding Family Medical Leave Act payments while my benefits and/or payments have been withheld. My employer also violated its own policy when it disciplined me for excused absences.

R:36; APX:451.

Hegger's affidavit in support of the charge clarified that his complaints about discipline related to write-ups for leaving the plant without permission. R:36; APX:452-56. Specifically, between September 1, 2002, and October 20, 2002, Hegger was disciplined three times for absenteeism. R:43; APX:128.

The plant used a progressive discipline system, and Hegger already had four occurrences when he was first

disciplined. R:43; APX:129. The first discipline was a Reprimand and Warning ("R&W"), for an absence on September 20, 2002. R:43; APX:129. Hegger's pay was docked for the time involved in the resulting disciplinary hearing, which was less than one hour. R:43; APX:130. The second incident of discipline was imposed because Hegger left the plant without permission on September 24, 2002. R:43; APX:130. The discipline was an R&W; he was also sent home, and his pay was docked for the balance of shift ("BOS"). R:43; APX:130. The third incident of discipline occurred after Hegger left the plant without permission on October 13, 2002. R:43; APX:131. His discipline was an R&W, plus a one-day suspension, so his pay was docked for the BOS, plus a day. R:43; APX:131.[3]

Except in an emergency, Hegger was required to notify his supervisor before leaving the plant. R:43; APX:133. He admitted, however, that he did not have his supervisor's permission to leave the plant on any of the three occasions for which he was disciplined. R:43; APX:132. Hegger continued the same behavior even after his supervisor told him that he needed permission to leave the plant. R:43; APX:133. As the court of appeals noted, Hegger did not provide any record evidence regarding white employees who were similarly situated but treated differently. R:43; APP:9a.

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[3] It was never clear whether Hegger was trying to complain about that third incident of discipline, given that it was outside the time period specified in the 2002 charge, but was based on an absence that occurred during the time frame specified in the charge – and it also occurred before he signed the charge on October 24, 2002. *See* R:36; APX:451.

C. Hegger's Medical Leave and Termination

Around the same time of his discipline for excessive absenteeism, the employers' Human Resources personnel began getting reports that Hegger was exhibiting strange and inappropriate behavior in the men's restroom at work. R:43; APX:137. Three employees provided written statements to that effect, and other employees also complained about Hegger's inappropriate behavior – namely: (1) that he was masturbating in a restroom stall with the door open; and (2) that he was stuffing paper in the toilet, causing the toilet to overflow, which spread feces and urine in the restroom. R:43; APX:137-38.

Based on the complaints about Hegger's bathroom behavior, Human Resources staff consulted with the plant's Employee Assistance Provider. R:43; APX:140. Hegger was put on paid medical leave in accordance with the collective bargaining agreement, and he was required to undergo a psychological exam. R:43; APX:140-41. Eventually Hegger was cleared to return to work, but instead of returning to work, he requested additional time off to consult with an attorney. R:43; APX:141-42. All of Hegger's requests for additional leave were granted. R:43; APX:142.

When Hegger returned to work, he had a disciplinary hearing, which resulted in a 30-day suspension for the inappropriate bathroom behavior that had been observed. R:43; APX:143. But because he already had an unpaid leave longer than 30 days, the suspension was treated as "time served," and Hegger was able to return to work immediately. R:43; APX:142.

On May 6, 2003, within a few weeks of resuming work, Hegger's employment was terminated for violating

the respondents' No Harassment Policy, after Hegger was caught vandalizing the property of a coworker. R:43; APX:147. Hegger pled guilty to both felony and misdemeanor charges, based both on the vandalism and on his efforts to evade the police. R:43; APX:147.

D. The Summary Judgment Entered by the District Court

In evaluating the respondents' motion for summary judgment, the district court observed that "most of the events at issue occurred prior to 1998." APP:12a. The court therefore concluded that those claims were time-barred. APP:13a. As to the claims that were within the scope of the charge of discrimination that Hegger filed with the EEOC in 2002, the district court noted that Hegger, as the party opposing summary judgment, was required to "come forth with sufficient evidence to withstand a motion for directed verdict." APP:12a. The court concluded that Hegger had failed to do so, and that Hegger's claims, to the extent they were not time-barred, were "not supported by sufficient facts to support a judgment under Title VII." APP:13a. The court accordingly granted summary judgment to the respondents. APP:13a.

E. The Decision of the Court of Appeals

The Sixth Circuit affirmed the summary judgment. APP:1a-10a. In doing so, the court addressed not only the time-barred nature of many of Hegger's claims, but also Hegger's failure to present sufficient evidence to satisfy the requirements of a Title VII claimant.

As to Hegger's time-barred allegations, the court of appeals noted that "[a]lthough Hegger timely filed this

lawsuit on the basis of his claims arising out of the 2002 EEOC charge, these allegations improperly included incidents that had been a part of the 1998 EEOC charge." APP:5a. In further addressing those claims, the court stated that "[a]s a preliminary matter, Hegger's Title VII allegations are limited to those claims that were asserted by him in his 2002 EEOC charge because he neglected to exercise his right to file a law suit under the 1998 charge in a timely manner." APP:7a-8a (footnote omitted). The court also observed that "[a]lthough the district court based its summary judgment decision, in part, on this issue, Hegger neither challenged nor addressed this point in his appeal." APP:8a n.5. Similarly, in the petition that Hegger has filed with this Court, Hegger has likewise not acknowledged or addressed this point.

As to the allegations that were within the scope of Hegger's 2002 charge, and therefore not time-barred, the court of appeals concluded that Hegger had failed to present sufficient evidence – either direct or circumstantial – to prevent the entry of summary judgment in favor of the respondents on his Title VII claim. APP:6a-9a.

On the absence of any direct evidence, the court of appeals stated as follows:

> In this case, Hegger is unaware of the identity of those persons who, in his judgment, are responsible for the alleged discriminatory conduct at his workplace. Moreover, Hegger has been unable to present any evidence which links the decisions by management to the conduct about which he has complained. Although he contends that the thirty-day suspension for his alleged bizarre behavior was the product of a racial animus, it appears from the record that the employer proffered

> a facially legitimate business reason for its administrative action. Rather than imposing another thirty day suspension period upon him, the company essentially considered his medical leave as "time served." Contrary to Hegger's position on this issue, it suggests that his employer was accommodating and displayed sensitivity under these circumstances.
>
> Consequently, we conclude that Hegger has failed to establish that (1) an act of unlawful discrimination was at least a motivating factor in his employer's decision to administratively discipline him or (2) the company acted with a discriminatory motive. Accordingly, Hegger has failed to proffer any direct evidence of illegal discriminatory conduct by Visteon.

APP:6a-7a.

On the question of circumstantial evidence, the court of appeals stated that "in light of the facts and circumstances surrounding the 2002 EEOC charge, it is clear that Hegger has not established any viable claim under Title VII." APP:8a. The court concluded that Hegger's allegations of retaliatory measures and hostile work environment during the six-week period from September 1, 2002, through October 20, 2002, were both "legally and factually deficient." APP:8a, 9a n.6.

In that regard, the court noted that Hegger had "neglected to proffer *any* evidence which would suggest that his employer acted in a discriminatory manner." APP:9a (emphasis in original). The court also observed that "[d]espite having claimed that white co-workers were treated differently from him, [Hegger] has been unable to identify any white fellow employee who, though similarly

situated, was treated differently." APP:9a. As a consequence, the court of appeals concluded that Hegger had not "satisfied the prima facie requirements of a Title VII violation." APP:9a.

The court of appeals further determined that the respondents would have been entitled to summary judgment even if Hegger had been able to present a prima facie case, due to his failure to assert "any argument that would rebut his employer's nondiscriminatory reasons for the adverse action which addressed his absenteeism record, as well as the complaints from fellow-employees about his questionable behavior while in the work place." APP:9a. Noting Hegger's admission that he did not have his supervisor's permission to leave the plant on any of the three occasions for which he was disciplined, the court recognized that the discipline against Hegger was in accordance with the plant's progressive attendance policy. APP:9a. Acknowledging that de minimus employment actions are neither materially adverse nor actionable, the court therefore concluded that "[t]he imposition of discipline against an employee for absenteeism according to company policy is not a materially adverse employment action." APP:9a. The action taken against Hegger was, in the view of the court of appeals, entirely "warranted" by "the relevant events." APP:9a.

Finally, in affirming the summary judgment in favor of the respondents for unlawful retaliation under Title VII, the court of appeals observed that Hegger had not "offered any evidence which suggests that he was engaged in a protected activity." APP:10a. Because evidence of that nature is essential to state a retaliation claim under Title VII, the court concluded that Hegger's retaliation claim "must necessarily fail." APP:10a.

In Hegger's petition, he states that "[i]n the concluding paragraph of the Sixth Circuit's Opinion, the author, District Judge Cook, flatly held (in speaking for the entire panel) that the record disclose [sic] genuine issues of material fact." P:5. The respondents must assume that Hegger inadvertently omitted the word "no" after the word "disclose" because the court of appeals held precisely otherwise. In the concluding paragraph of its decision affirming the summary judgment against Hegger, the court of appeals actually stated as follows:

> In noting that Hegger has not set forth any evidence – direct or circumstantial – which satisfies the disparate discipline framework, this Court agrees with the decision by the district court to grant a summary judgment in favor of the employer because *we also believe that there are no genuine issues of a material fact to be resolved.*

APP:10a (emphasis added).

ARGUMENTS FOR DENYING THE PETITION

A. THIS COURT SHOULD DENY HEGGER'S PETITION EVEN IF IT BELIEVES THAT THE COURT OF APPEALS ERRED IN AFFIRMING THE SUMMARY JUDGMENT AGAINST HIM

Rule 10 of this Court's rules cautions that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." S. Ct. R. 10. That is the situation here; in his petition, Hegger is saying merely that the court of appeals misapplied the well-established standard for determining whether summary

judgment is appropriate. *See* P:4-5. Even if he were right in his contention (although he is not), that would not render this case worthy of review by this Court.

The Sixth Circuit's decision in this case: (1) does not conflict with a decision of any other United States court of appeals on any important issue of law; (2) does not conflict with a decision of any state court of last resort on any issue of federal law; (3) does not represent such a departure from the accepted and usual course of judicial proceedings, or sanction such a departure by the district court, as to call for the exercise of this Court's supervisory power; (4) does not address any legal or factual issue of nationwide significance; (5) does not present any danger of creating uncertainty or confusion in future cases; (6) does not present the potential for affecting other cases; (7) does not create problematic precedent; and (8) does not represent an unjust result. *See generally* S. Ct. R. 10.

In short, there is nothing "certworthy" about this case. It is a standard, basic employment discrimination case in which the plaintiff lost and is simply seeking to keep fighting as long and as hard as he possibly can. This Court's resources, however, should be devoted to other matters. Certiorari should therefore be denied.

Moreover, even this Court's agreement with Hegger's argument would not affect the ultimate outcome here. His sole argument is it is improper, in the context of summary judgment, for a court to resolve issues of "state of mind, intent, or witness credibility." P:4. Whether that is true makes no difference here, because the Sixth Circuit did nothing of the sort, as even a cursory reading of its decision plainly reveals.

What the court of appeals did instead was affirm the district court's summary judgment on the basis of Hegger's complete failure to present any evidence to support necessary elements of his Title VII claim. The deficiencies in his evidentiary showing included: (1) his failure to show that any white coworker was similarly situated, but treated differently; (2) his failure to show that management was linked in any way to the racial conduct about which he complained; (3) his failure to offer anything that would rebut his employers' legitimate nondiscriminatory reasons for the discipline taken against him under the plant's policy; (4) his admission that he did not have his supervisor's permission to leave the plant on the three occasions for which he received discipline, even though he knew that such permission was required; (5) his failure to timely file suit for the alleged incidents that were the subject of the charge of discrimination that he filed with the EEOC in 1998; and (6) the undisputed fact that the termination of Hegger's employment occurred for reasons for which he later pled guilty in a subsequent criminal proceeding.

Despite what Hegger says in his petition, none of these points presented factual issues concerning "state of mind, intent, or witness credibility" (P:4) – or in any other way. They were all undisputed matters of record before the court of appeals, and, as the court of appeals correctly recognized, those deficiencies in Hegger's case entitled the respondents to summary judgment on Hegger's Title VII claims irrespective of whether *other* issues of "state of mind, intent, or witness credibility" (P:4) may have remained in the case. The evidence that *did* plainly exist prevented Hegger from proving his case. *See generally McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (setting forth a plaintiff's burden in Title VII

actions); *Raytheon Co. v. Hernandez*, 540 U.S. 44, 50 n.3 (2003) (recognizing that the courts of appeals apply the *McDonnell Douglas* standard in determining whether to grant summary judgment in Title VII cases); *see generally Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986) (standard for summary judgment); *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 247-52 (1986) (party opposing summary judgment must come forth with sufficient evidence to withstand a motion for directed verdict).

Thus, because the respondents were entitled to judgment as a matter of law regardless of how any of the unspecified issues of "state of mind, intent, or witness credibility" to which Hegger refers (P:4) may have been resolved, this Court would therefore be engaging in a mere academic exercise if it used this case to determine whether the court of appeals improperly resolved issues of that nature. This Court's decision would make no difference to the ultimate resolution of the case. And the respondents suggest that this Court's scarce resources should instead be devoted to cases presenting important questions to which this Court's answers actually affect the outcomes. *See, e.g., The Monrosa v. Carbon Black, Inc.*, 359 U.S. 180, 184 (1959). That is not the situation here.

B. THE COURT OF APPEALS CORRECTLY AFFIRMED THE SUMMARY JUDGMENT AGAINST HEGGER AND APPLIED WELL-SETTLED PRINCIPLES OF LAW IN DOING SO

In the foregoing section of this brief, the respondents assumed at times, for purposes of argument, that the court of appeals was incorrect in affirming the summary judgment that the district court entered against Hegger. The respondents obviously believe otherwise. In truth, the

Sixth Circuit ruled properly, and it applied well-settled, unremarkable principles of law when it did so. For that additional reason, Hegger's petition for a writ of certiorari should be denied.

In his petition, Hegger mentions only a single issue: whether the court of appeals erred in holding there were no genuine issues of material fact presented by the record. Hegger wholly ignores the basic contention below that not all of his claims were properly in front of the district court. The only allegations properly before that court were the alleged incidents of disparate treatment referenced in Hegger's 2002 EEOC charge, occurring between September 1, 2002, and October 20, 2002. Yet, in his petition, Hegger says nothing whatsoever about events occurring during that relevant time period, choosing instead to confine himself to the time frame for which his claims are unquestionably time-barred.

The court of appeals, however, quite properly limited itself to the claims that Hegger made in his 2002 EEOC charge. *See Ang v. Proctor & Gamble Co.*, 932 F.2d 540, 545-46 (6th Cir. 1991). But Hegger utterly failed to present sufficient evidence to support those claims.

To establish a claim of disparate treatment, Hegger was required to prove that: (1) he is a member of a protected class; (2) he was subjected to an adverse employment action; and (3) similarly situated employees from outside the protected class were treated more favorably. *See, e.g., Smith v. City of Salem*, 378 F.3d 566, 570 (6th Cir. 2004); *Rice-Lamar v. City of Ft. Lauderdale*, 232 F.3d 836, 843 (11th Cir. 2000). Hegger presented no evidence as to the second and third of those elements. Nor could he

show that his employers' stated reasons for imposing discipline against him were pretextual.

In the time period identified in his charge, Hegger was disciplined three times, all for leaving the plant early. However, he presented no evidence that he was treated any differently than anyone similarly situated outside the protected class. Hegger was required to get permission from his supervisor to leave work early. He failed to do so and was disciplined as a consequence. Even if Hegger did not understand that supervisory permission was required, he should have known that after he was disciplined the first time. But instead of changing or correcting his behavior, he continued to leave the plant early without permission.

Moreover, the discipline given to Hegger was in line with the progressive discipline policy of the plant for attendance. Prior to September 1, 2002, Hegger had four occurrences. For the fifth occurrence (which was the first discipline within the time frame of the charge), Hegger received a R&W and was docked the time for the resulting disciplinary hearing. For the next occurrence, he was given a R&W and sent home for the BOS. For the next occurrence, he received a R&W, and was sent home for BOS, plus one day. As the court of appeals correctly recognized, that discipline was not an adverse employment action sufficient to support a discrimination or retaliation claim, because it was not "materially adverse." *See Ford v. General Motors Corp.*, 305 F.3d 545, 553 (6th Cir. 2002). *De minimis* employment actions are not materially adverse and therefore not actionable. *Id.* Simply put, the write-ups and lost time did not rise to the level of an adverse employment action, as a matter of law. *See Walker v. Thompson*, 214 F.3d 615, 629 (5th Cir. 2000) (*de minimis* loss of

pay does not rise to the level of an adverse employment action).

In neither the district court, the court of appeals, nor this Court did Hegger identify any evidence suggesting that the discipline he received was because of any protected activity or any protected characteristic. Nor has he ever even attempted to rebut legitimate explanations offered by the respondents for that discipline, especially in light of his own admission that he did not get permission from his supervisor for his absences. *See Anthony v. BTR Auto. Sealing Sys.*, 339 F.3d 506, 516 (6th Cir. 2003).

It was simply not enough – in the district court, in the court of appeals, or in this Court – for Hegger to assert that he had been treated differently. He presented no evidence whatsoever to support that assertion. The court of appeals was therefore entirely correct in affirming the summary judgment against Hegger on his Title VII claim. He has presented no colorable argument to the contrary, and he has certainly provided this Court with no reason to grant certiorari.

CONCLUSION

For the foregoing reasons, the respondents respectfully request that the Court deny Hegger's petition for a writ of certiorari.

Respectfully submitted,

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